

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HAROLD B. SHAW, JR.,

Defendant-Appellant.

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UNPUBLISHED

October 28, 2003

No. 234923

Wayne Circuit Court

LC No. 00-011373

AFTER REMAND

Before: Talbot, P.J., and Neff and Kelly, JJ.

MEMORANDUM.

Defendant appealed as of right his conviction of first-degree felony murder, MCL 750.316(1)(b), assault with intent to commit murder, MCL 750.83, first-degree home invasion, MCL 750.110a(2), and possession of a firearm during the commission of a felony, MCL 750.227b. On June 12, 2003, we issued an opinion and order, affirming in part and remanding to the trial court for a determination whether the prosecutor exercised due diligence in securing the appearance at trial of Police Officer Gregory Edwards as a witness. At trial, the court had improperly denied defendant's request for a due diligence hearing. We retained jurisdiction.

On August 29, 2003, the trial court conducted the due diligence hearing. We conclude that the court properly determined that the prosecutor exercised due diligence in attempting to secure the witness and that he was unavailable pursuant to MRE 804(a)(5). Having determined in *People v Shaw*, unpublished opinion per curiam of the Court of Appeals, issued June 12, 2003 (Docket No. 234923), that defendant's statement to the police was not the fruit of an illegal arrest and was properly admitted into evidence, we affirm defendant's conviction.

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ Kirsten Frank Kelly